

Introduced by Senator Strickland

February 25, 2009

An act to amend Sections 237, 368, 1048, and 14213 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 344, as introduced, Strickland. Crimes against elders and dependent adults.

Existing law proscribes various crimes committed against an elder or dependent adult when the person has knowledge or reasonably should know that the victim is an elder or dependent adult. These crimes include willfully causing or permitting an elder or dependent adult to suffer or inflicting unjustifiable physical pain or mental suffering, or causing or permitting the person or health of the elder or dependent to be injured or placed in a situation in which his or her health is endangered. Existing law also establishes an additional penalty for a person who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the person or property of an elder or dependent adult.

This bill would apply the above penalty to knowingly engaging in exploitation of or exerting criminal undue influence upon an elder or dependent adult in order to acquire possession or control of an interest in funds or property of the elder or dependent adult. This bill would also establish a 2-year penalty enhancement for each prior conviction for any person who violates the above provisions governing abuse of an elder or dependent adult in addition to the sentences set forth in those provisions. The bill would revise and recast the definitions of terms used in those provisions and make technical changes to related provisions.

By expanding the definitions of crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 237 of the Penal Code is amended to
2 read:

3 237. (a) False imprisonment is punishable by a fine not
4 exceeding one thousand dollars (\$1,000), or by imprisonment in
5 the county jail for not more than one year, or by both that fine and
6 imprisonment. If the false imprisonment be effected by violence,
7 menace, fraud, or deceit, it shall be punishable by imprisonment
8 in the state prison.

9 (b) False imprisonment of an elder or dependent adult by use
10 of violence, menace, fraud, or deceit shall be punishable as
11 described in subdivision ~~(f)~~ (g) of Section 368.

12 SEC. 2. Section 368 of the Penal Code is amended to read:

13 368. (a) The Legislature finds and declares that crimes against
14 elders and dependent adults are deserving of special consideration
15 and protection, not unlike the special protections provided for
16 minor children, because elders and dependent adults may be
17 confused, on various medications, mentally or physically impaired,
18 or incompetent, and therefore less able to protect themselves, to
19 *resist financial exploitation or criminal undue influence*, to
20 understand or report criminal conduct, or to testify in court
21 proceedings on their own behalf.

22 (b) (1) Any person who knows or reasonably should know that
23 a person is an elder or dependent adult and who, under
24 circumstances or conditions likely to produce great bodily harm
25 or death, willfully causes or permits any elder or dependent adult
26 to suffer, or inflicts thereon unjustifiable physical pain or mental
27 suffering, or having the care or custody of any elder or dependent
28 adult, willfully causes or permits the person or health of the elder

1 or dependent adult to be injured, or willfully causes or permits the
2 elder or dependent adult to be placed in a situation in which his or
3 her person or health is endangered, is punishable by imprisonment
4 in a county jail not exceeding one year, or by a fine not to exceed
5 six thousand dollars (\$6,000), or by both that fine and
6 imprisonment, or by imprisonment in the state prison for two,
7 three, or four years.

8 (2) If in the commission of an offense described in paragraph
9 (1), the victim suffers great bodily injury, as defined in Section
10 12022.7, the defendant shall receive an additional term in the state
11 prison as follows:

12 (A) Three years if the victim is under 70 years of age.

13 (B) Five years if the victim is 70 years of age or older.

14 (3) If in the commission of an offense described in paragraph
15 (1), the defendant proximately causes the death of the victim, the
16 defendant shall receive an additional term in the state prison as
17 follows:

18 (A) Five years if the victim is under 70 years of age.

19 (B) Seven years if the victim is 70 years of age or older.

20 (c) Any person who knows or reasonably should know that a
21 person is an elder or dependent adult and who, under circumstances
22 or conditions other than those likely to produce great bodily harm
23 or death, willfully causes or permits any elder or dependent adult
24 to suffer, or inflicts thereon unjustifiable physical pain or mental
25 suffering, or having the care or custody of any elder or dependent
26 adult, willfully causes or permits the person or health of the elder
27 or dependent adult to be injured or willfully causes or permits the
28 elder or dependent adult to be placed in a situation in which his or
29 her person or health may be endangered, is guilty of a
30 misdemeanor. A second or subsequent violation of this subdivision
31 is punishable by a fine not to exceed two thousand dollars (\$2,000),
32 or by imprisonment in a county jail not to exceed one year, or by
33 both that fine and imprisonment.

34 (d) Any person who is not a caretaker who violates any provision
35 of law proscribing theft, embezzlement, forgery, or fraud, or who
36 violates Section 530.5 proscribing identity theft, with respect to
37 the property or personal identifying information of an elder or a
38 dependent adult, *or who knowingly engages in exploitation of, or*
39 *exerts criminal undue influence upon, an elder or dependent adult*
40 *in order to acquire possession or control of an interest in funds*

1 *or property belonging to the elder or dependent adult*, and who
2 knows or reasonably should know that the victim is an elder or a
3 dependent adult, is punishable by imprisonment in a county jail
4 not exceeding one year, or in the state prison for two, three, or four
5 years, when the moneys, labor, goods, services, or real or personal
6 property taken or obtained is of a value exceeding four hundred
7 dollars (\$400); and by a fine not exceeding one thousand dollars
8 (\$1,000), by imprisonment in a county jail not exceeding one year,
9 or by both that fine and imprisonment, when the moneys, labor,
10 goods, services, or real or personal property taken or obtained is
11 of a value not exceeding four hundred dollars (\$400).

12 (e) Any caretaker of an elder or a dependent adult who violates
13 any provision of law proscribing theft, embezzlement, forgery, or
14 fraud, or who violates Section 530.5 proscribing identity theft,
15 with respect to the property or personal identifying information of
16 that elder or dependent adult, *or who knowingly engages in*
17 *exploitation of, or exerts criminal undue influence upon, an elder*
18 *or dependent adult in order to acquire possession or control of an*
19 *interest in funds or property belonging to the elder or dependent*
20 *adult*, is punishable by imprisonment in a county jail not exceeding
21 one year, or in the state prison for two, three, or four years when
22 the moneys, labor, goods, services, or real or personal property
23 taken or obtained is of a value exceeding four hundred dollars
24 (\$400), and by a fine not exceeding one thousand dollars (\$1,000),
25 by imprisonment in a county jail not exceeding one year, or by
26 both that fine and imprisonment, when the moneys, labor, goods,
27 services, or real or personal property taken or obtained is of a value
28 not exceeding four hundred dollars (\$400).

29 (f) *Any person convicted of a felony violation of subdivision (b),*
30 *(d), or (e) who has any prior conviction for a violation of*
31 *subdivision (b), (d), or (e), shall receive two years in the state*
32 *prison for each prior conviction in addition to the sentence*
33 *provided in subdivision (b), (d), or (e). The existence of any fact*
34 *that would subject a person to a penalty enhancement pursuant to*
35 *this subdivision shall be alleged in the accusatory pleading and*
36 *either admitted by the defendant in open court or found to be true*
37 *by the trier of fact.*

38 ~~(f)~~

39 (g) Any person who commits the false imprisonment of an elder
40 or a dependent adult by the use of violence, menace, fraud, or

1 deceit is punishable by imprisonment in the state prison for two,
2 three, or four years.

3 *(h) For purposes of this section, the following definitions shall*
4 *apply:*

5 ~~(g) As used in this section, “older”~~

6 *(1) “Caretaker” means any person who is 65 years has the care,*
7 *custody, or control of, or who stands in a position of age trust*
8 *with, an elder or older a dependent adult, or who has assumed any*
9 *of the duties correspondent to the role of a caregiver for the elder*
10 *or dependent adult.*

11 *(2) (A) “Criminal undue influence” means the exploitation by*
12 *a person of a known physical or mental infirmity or other physical,*
13 *mental, or emotional dysfunction in an elder or dependent adult*
14 *for financial gain by one of the following methods:*

15 *(i) Using a position of trust or confidence or using any real or*
16 *apparent authority over the elder or dependent adult for the*
17 *purpose of obtaining an unfair advantage over the elder or*
18 *dependent adult.*

19 *(ii) Knowingly taking an oppressive and unfair advantage of*
20 *an elder or dependent adult’s weakness of mind, necessities, or*
21 *distress.*

22 *(B) It is a defense to criminal undue influence if the person held*
23 *a good faith belief that the elder or dependent adult had the*
24 *capacity to consent, and did consent to the transaction. For this*
25 *defense to apply, the person must engage in the transaction or*
26 *attempt to take the funds or property openly. If the person attempts*
27 *to conceal the taking, either when it occurs or after it is discovered,*
28 *the defense is unavailable.*

29 ~~(h) As used in this section, “dependent~~

30 *(3) “Dependent adult” means any person who is between the*
31 *ages of 18 and 64, who has physical or mental limitations-which*
32 *that restrict his or her ability to carry out normal activities or to*
33 *protect his or her rights, including, but not limited to, persons who*
34 *have physical or developmental disabilities or whose physical or*
35 *mental abilities have diminished because of age. “Dependent adult”*
36 *includes any person between the ages of 18 and 64 who is admitted*
37 *as an inpatient to a 24-hour health facility, as defined in Sections*
38 *1250, 1250.2, and 1250.3 of the Health and Safety Code. Code,*
39 *or who receives services at or from a facility required to be*
40 *licensed by the State of California to serve dependent adults, or*

1 *who receives services from a home care provider required to be*
2 *licensed by the State of California or from a person or organization*
3 *that offers, provides, or arranges for personal care assistance*
4 *services.*

5 (4) “Elder” means any person who is 65 years of age or older.

6 (5) “Exploitation of an elder or dependent adult” means either
7 of the following:

8 (A) Knowingly, by means of threats, force, duress, menace,
9 fraud, intimidation, or criminal undue influence, obtaining or
10 using, or endeavoring to obtain or use, the elder or dependent
11 adult’s funds, assets, or real or personal property with the intent
12 to temporarily or permanently deprive the elder or dependent adult
13 of the use, benefit, or possession of the funds, assets, or real or
14 personal property, or to benefit someone other than the elder or
15 dependent adult, by a person who either:

16 (i) ~~As used in this section, “caretaker” means any person~~
17 ~~who has the care, custody, or control of, or who stands in a position~~
18 ~~of trust with, an and confidence with the elder or a dependent adult.~~

19 (ii) Has a personal, professional, or business relationship with
20 the elder or dependent adult.

21 (B) Obtaining or using, endeavoring to obtain or use, or
22 conspiring with another to obtain or use the elder or dependent
23 adult’s funds, assets, or property with the intent to temporarily or
24 permanently deprive the elder or dependent adult of the use,
25 benefit, or possession of the funds, assets, or property, or to benefit
26 someone other than the elder or dependent adult, by a person who
27 knows that the elder or dependent adult lacks the capacity to
28 consent.

29 (6) An elder or dependent adult “lacks the capacity to consent”
30 to an act or transaction if any of the following applies:

31 (A) He or she acts as a result of threats, force, duress,
32 harassment, menace, fraud, or criminal undue influence.

33 (B) He or she lacks knowledge of the true nature of the act or
34 transaction involved.

35 (C) He or she lacks the mental capacity to make an intelligent
36 choice about whether or not to do something proposed by another
37 person

38 ~~(j) Nothing in this~~

39 ~~(i) This section shall~~ does not preclude prosecution under both
40 this section and Section 187 or 12022.7 or any other provision of

1 law. However, a person shall not receive an additional term of
2 imprisonment under both paragraphs (2) and (3) of subdivision
3 (b) for any single offense, nor shall a person receive an additional
4 term of imprisonment under both Section 12022.7 and paragraph
5 (2) or (3) of subdivision (b) for any single offense.

6 ~~(k)~~

7 (j) In any case in which a person is convicted of violating these
8 provisions, the court may require him or her to receive appropriate
9 counseling as a condition of probation. Any defendant ordered to
10 be placed in a counseling program shall be responsible for paying
11 the expense of his or her participation in the counseling program
12 as determined by the court. The court shall take into consideration
13 the ability of the defendant to pay, and no defendant shall be denied
14 probation because of his or her inability to pay.

15 SEC. 3. Section 1048 of the Penal Code is amended to read:

16 1048. (a) The issues on the calendar shall be disposed of in
17 the following order, unless for good cause the court directs an
18 action to be tried out of its order:

19 (1) Prosecutions for felony, when the defendant is in custody.

20 (2) Prosecutions for misdemeanor, when the defendant is in
21 custody.

22 (3) Prosecutions for felony, when the defendant is on bail.

23 (4) Prosecutions for misdemeanor, when the defendant is on
24 bail.

25 (b) Notwithstanding subdivision (a), all criminal actions in
26 which (1) a minor is detained as a material witness or is the victim
27 of the alleged offense, (2) a person who was 70 years of age or
28 older at the time of the alleged offense or is a dependent adult, as
29 defined in subdivision ~~(d)~~ (h) of Section 368, was a witness to, or
30 is the victim of, the alleged offense or (3) any person is a victim
31 of an alleged violation of Section 261, 262, 264.1, 273a, 273d,
32 285, 286, 288, 288a, or 289, committed by the use of force,
33 violence, or the threat thereof, shall be given precedence over all
34 other criminal actions in the order of trial. In those actions,
35 continuations shall be granted by the court only after a hearing
36 and determination of the necessity thereof, and in any event, the
37 trial shall be commenced within 30 days after arraignment, unless
38 for good cause the court shall direct the action to be continued,
39 after a hearing and determination of the necessity of the

1 continuance, and states the findings for a determination of good
2 cause on the record.

3 (c) Nothing in this section shall be deemed to provide a statutory
4 right to a trial within 30 days.

5 SEC. 4. Section 14213 of the Penal Code is amended to read:

6 14213. (a) As used in this title, “missing person” includes, but
7 is not limited to, a child who has been taken, detained, concealed,
8 enticed away, or retained by a parent in violation of Chapter 4
9 (commencing with Section 277) of Title 9 of Part 1. It also includes
10 any child who is missing voluntarily or involuntarily, or under
11 circumstances not conforming to his or her ordinary habits or
12 behavior and who may be in need of assistance.

13 (b) As used in this title, “evidence that the person is at risk”
14 includes, but is not limited to, evidence or indications of any of
15 the following:

16 (1) The person missing is the victim of a crime or foul play.

17 (2) The person missing is in need of medical attention.

18 (3) The person missing has no pattern of running away or
19 disappearing.

20 (4) The person missing may be the victim of parental abduction.

21 (5) The person missing is mentally impaired.

22 (c) As used in this title, “child” is any person under the age of
23 18.

24 (d) As used in this title, “center” means the Violent Crime
25 Information Center.

26 (e) As used in this title, “dependent adult” is any person
27 described in *paragraph (3) of subdivision (e) (h)* of Section 368.

28 (f) As used in this title, “dental or medical records or X-rays,”
29 include all those records or X-rays which are in the possession of
30 a dentist, physician and surgeon, or medical facility.

31 SEC. 5. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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